

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

Kathryn KNOWLTON, Dana McCORMICK et al,

Plaintiffs,

v.

Case No. 20 CV 01660

CITY OF WAUWATOSA, Dennis McBRIDE,
Barry WEBER, et al,

Defendants.

**MOTION FOR DEFAULT AND APPLICATION FOR DEFAULT JUDGMENTS
AGAINST DEFENDANTS CITY OF WAUWATOSA, DENNIS McBRIDE, and BARRY
WEBER**

NOW COMES Plaintiffs by their attorneys, who moves the Court, pursuant to Federal Rule of Civil Procedure 55(a), for an entry of default against Defendants City of Wauwatosa, Dennis McBride, and Barry Weber, hereinafter referred to as “Defendants” and applies to the Court, pursuant to Federal Rule of Civil Procedure 55(b)(2), for a default judgment against Defendants City of Wauwatosa, Dennis McBride, and Barry Weber and in support state as follows:

1. On February 1, 2022 the court issued its order and decision in which Plaintiffs were granted leave to file an amended complaint due on February 15, 2022. *See* Court’s Decision and Order DKT 152.

2. Defendants City of Wauwatosa, Dennis McBride, and Barry Weber have been defendants on this matter since its original filing on November 2, 2020 and have been under the jurisdiction of this court since December 8, 2020. *See* Court’s Order on Jurisdiction DKT 10. *See* Exhibit A Plaintiff’s 1st Complaint filed 11/2/20.

3. Defendants Jeffrey Farina, Joseph Lewandowski, Dominick Ratkowski, Joseph Roy, George Schimmel, Luke Vetter, and Shane Wrucke were added as defendants in this matter and on September 10, 2021 Defendant's filed their answer to Plaintiffs Third Amended Complaint. *See Exhibit B - Defendant's Answer to Plaintiff's Third Amended Complaint 9/10/21.*

4. Defendants Maria Arbiter, Daniel Mitchell, George Opelt, Robert Piehl, Russell Richardson, James Short, Brian Skornia, Timothy Warren, and Kelly Zielinski were added as defendants in this matter on the February 15, 2022. *See Exhibit C – DKT 155 Plaintiff's 4th Complaint filed 2/15/22.*

5. On February 15, 2022 Plaintiffs electronically filed their amended complaint and Defendants City Of Wauwatosa, Dennis McBride, and Barry Weber, were properly notified of such service through the ECF. *See Exhibit C.*

6. Defendants City Of Wauwatosa, Dennis McBride, and Barry Weber have failed to answer or otherwise plead to Plaintiffs Amended Complaint filed on 2/15/22.

7. On March 21, 2022 Plaintiffs informed Defense Counsel and asked for a meet and confer of our intention to file a motion for default judgment for the defendants who have appeared on this matter. *See Exhibit I – 03/21/22 Plaintiffs email communications with Defendant's Counsel regarding motion for entry of default.*

8. Pursuant to Fed. Rule of Civil Procedure 15 (a)3 “Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.”

9. Plaintiffs filed their amended complaint on February 15, 2022 and Defendants City of Wauwatosa, Dennis McBride, and Barry Weber were properly notified of such service through

ECF on February 15, 2022. These Defendants were required to file their response no later than March 1, 2022 which to date Defendants have failed to do and believe they have sixty days to file a response as to all defendants. *See* Exhibit I.

10. Federal Rule of Civil Procedure 55(a) provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Once a default is entered, Plaintiff may obtain a default judgment. *See generally* 10A Wright & Miller, Federal Practice & Procedure § 2682 (4th ed. 2016). Because the amount of Plaintiff’s claim is not for a sum certain and damages must be determined in this case, Plaintiff “must apply to the court for a default judgment” and a hearing at least on damages, will likely be necessary. FED.R.CIV.P.55(b)(2); *see also generally* Securities and Exchange Commission v. Tropikgadget FZE., No. 15 C 10543-ADB, 2016 WL 4555595 (D. Mass. Aug. 31, 2016) (outlining the legal standards for a default judgment).

11. In Plaintiffs 4th Amended Complaint, the First Claim for Relief is against Defendants City of Wauwatosa and Dennis McBride. Plaintiffs request that the court enter a default judgment against Defendants City of Wauwatosa and Dennis McBride for this claim. *See* Exhibit D - DKT 155 Pl 4th Amended Complaint pg. 104.

12. In Plaintiffs 4th Amended Complaint, the Third Claim for Relief is against the City of Wauwatosa. Plaintiffs request that the court enter a default judgment against Defendant City of Wauwatosa for this claim. *See* Exhibit E – DKT 155 Pl 4th Amended Complaint pg. 109.

13. In Plaintiffs 4th Amended Complaint, the Sixth Claim for Relief is against Defendant Barry Weber. Plaintiffs request that the court enter a default judgment against

Defendant Barry Weber for this claim. *See* Exhibit F – DKT 155 Pl 4th Amended Complaint pg. 116 – 117.

14. In Plaintiffs 4th Amended Complaint, the Seventh Claim for Relief is against Defendants City of Wauwatosa, Jeffrey Farina, Joseph Lewandowski, Dennis McBride, Daniel Mitchell, Robert Piehl, George Opelt, Luke Vetter, Barry Weber, Timothy Warren, Russell Richardson, and John Doe Officers. Plaintiffs request that the court enter default judgments against Defendants City of Wauwatosa, Dennis McBride, and Barry Weber for their part in this claim. *See* Exhibit G – DKT 155 Pl 4th Amended Complaint pg. 118.

15. In Plaintiffs 4th Amended Complaint, the Eleventh Claim for Relief is against Defendant City of Wauwatosa. Plaintiffs request that the court enter a default judgment against Defendant City of Wauwatosa for this claim. *See* Exhibit H – DKT 155 Pl 4th Amended Complaint pg. 129.

WHEREFORE, all Plaintiffs moves the Court, pursuant to Federal Rule of Civil Procedure 55(a), for entry of default against Defendants City of Wauwatosa, Barry Weber, and Dennis McBride for Plaintiffs First, Third, Sixth, and Eleventh, Claims for Relief. Plaintiffs also moves the Court, pursuant to Federal Rule of Civil Procedure 55(a), for an entry of default against Defendants City of Wauwatosa, Dennis McBride, and Barry Weber for their part in the Seventh Claim for Relief. Plaintiffs applies to the Court, pursuant to Federal Rule of Civil Procedure 55(b)(2), for entry of default judgments against Defendants City of Wauwatosa, Dennis McBride, and Barry Weber for all appropriate claims.

Respectfully submitted this 22nd day of March, 2022.

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